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SUBJECT: PANAMA - 2006 NATIONAL TRADE ESTIMATE REPORT

## 1. TRADE SUMMARY

The U.S. trade surplus with Panama was \$1.50 billion in 2004, a decrease of \$43 million from \$1.55 billion in 2003. U.S. goods exports in 2004 were \$1.8 billion, up 1.6 percent from the previous year. Corresponding U.S. imports from Panama were \$316 million, up 4.8 percent. Panama is currently the 48th largest export market for U.S. goods. The stock of U.S. foreign direct investment (FDI) in Panama in 2003 was \$6.5 billion, up from \$5.8 billion in 2002. U.S. FDI in Panama is concentrated largely in the financial, energy, and maritime sectors.

## 2. IMPORT POLICIES

### a. Tariffs

Following its accession to the World Trade Organization (WTO) in 1997, Panama opened its markets considerably and its tariffs ranked among the lowest in Latin America, averaging just 8 percent. However, in September 1999, Panama raised selected agricultural tariffs, some of which reached the maximum amount allowed under Panama's WTO commitments. For example, Panama retains tariffs of 273% for chicken, 63-159% for dairy products, 83% for tomatoes and over-quota potatoes, 74% for pork, 55% for rice, 20% on sparkling wine and other fermented beverages, and 40% on still wines. In addition, Panama charges a 10 percent tax on wine products. Panama also increased the tariff on frozen french fries from 15 percent to 20 percent.

### b. Non-Tariff Measures

In addition to tariffs, all imports into Panama are subject to a 5 percent transfer (or ITBM) tax levied on the CIF value, and other handling charges. Pharmaceuticals, foods, and school supplies are exempt from the transfer tax. Currently, Panama does not require import licenses on manufactured goods in the country, provided the importing entity holds a commercial or industrial license to operate in Panama.

### c. Free Trade Negotiations

In April 2004, the United States and Panama began negotiating a free trade agreement (FTA). Negotiations proceeded through eight rounds, the most recent of which concluded in February 2005. As of late 2005, U.S. and Panamanian negotiators continued to discuss possible ways forward to successfully conclude an FTA. A bilateral FTA with Panama would be a natural extension of an already largely open trade and investment relationship. Panama is unique in Latin America, but like the United States, in that it is predominantly a services-based economy, as services represent about 80% of Panama's GDP. Following passage of the U.S. FTA with Central America and the Dominican Republic (CAFTA-DR), and bilateral FTA with Panama could further boost momentum for lowering trade and investment barriers throughout the region.

## 3. STANDARDS, TESTING, LABELING, AND CERTIFICATION

With certain exceptions, Panama's application of standards and certification requirements generally conforms to WTO standards. However, restrictions have been applied at times in order to protect local producers. Of particular concern has been the lack of procedural transparency by relevant Panamanian authorities in deciding whether to issue phytosanitary permits.

Panama requires that Panamanian health and agriculture officials certify individual U.S. processing plants as a precondition for the import of poultry, pork, dairy, and beef products. U.S. exporters have assisted Panamanian officials in inspecting U.S. plants, and there have been no instances of a failed inspection by a U.S. plant. However, inspections are often delayed due to budgetary constraints and the lack of personnel in the responsible Panamanian ministries. As such, it is the United States' priority to obtain Panamanian recognition of the U.S. meat inspection system in place of the current plant-by-plant approach. This effort is a primary focus of the ongoing FTA negotiations.

In December 2003, following detection of the first case of bovine spongiform encephalopathy (BSE), or "Mad Cow" disease in the U.S., the Panamanian Agriculture Ministry banned importation of U.S. beef. The ban remained in place for until March 2005, despite U.S. assurances that BSE-infected beef never entered the human food supply. Shortly after the U.S. discovered a second BSE case, the Agriculture Ministry reinstated the ban in May 2005. Following questionable reporting requirements imposed on the U.S. Department of Agriculture and problematic delays, the Agriculture Ministry lifted the ban in October 2005. The Agriculture Ministry acted slowly to resume issuance of import permits for U.S. beef. Before the ban, Panama imported an estimated 12,000 pounds (5,400 kilograms) of U.S. beef yearly.

Panama's import licensing process is often arbitrary and non-transparent, constituting a major impediment for U.S. exporters. For example, Panamanian importers of U.S. processed potatoes have had difficulties obtaining import permits in 2003 and 2004. In one instance, arguing that U.S. processed potatoes compete directly with domestic fresh potatoes, the Panamanian government refused to issue import permits for frozen french fries, disrupting the extensive quick service restaurant industry within the country.

While importers of non-agricultural products must register them with the Ministry of Commerce and Industry before distribution or sale in Panama, procedures for registration are usually straightforward and evenly applied. There is no comprehensive labeling or testing requirement for imports, except for food and pharmaceutical products. U.S. industry is seeking a commitment from the Panamanian government to provide explicit recognition of Bourbon and Tennessee Whiskey as a trademark.

When the United States launched FTA negotiations in 2004, it simultaneously initiated a working group on SPS barriers to agricultural trade to meet in parallel with the negotiations and to work on resolution of SPS issues even after the negotiations conclude.

#### **14. GOVERNMENT PROCUREMENT**

Panama's government procurement regime is governed by Law 56 and managed by the Ministry of Economy and Finance (MEF). The law provides for a transparent bidding process for government contracts, but allows for exceptions, such as procurements for national defense. The Panamanian Government has generally handled bids in a transparent manner, although occasionally U.S. companies have complained of mishandling of certain procedures.

While Panama committed to become a party to the WTO Government Procurement Agreement (GPA) at the time of its WTO accession, its efforts to accede to the GPA have stalled. Although the Panama Canal Authority (PCA) has generally followed transparent and fair bidding processes, the United States was disappointed by the Government of Panama's exclusion of the PCA from its accession offer. The U.S. government is currently addressing the issue of the PCA within the context of bilateral FTA negotiations to help ensure a strong government procurement package that would give U.S. businesses fair opportunities to bid on Panama Canal expansion work, should Panamanian voters ultimately approve a future referendum on Canal expansion and modernization.

#### **15. EXPORT SUBSIDIES**

Panamanian law allows any company to import raw materials or semi-processed goods at a duty of three percent for domestic consumption or processing, or duty free for export production, except for sensitive agricultural products, such as rice, dairy, pork, and tomato products. Companies not already receiving benefits under the Special Incentives Law of 1986 are allowed a tax deduction of up to 10 percent of their profits from export operations through 2005.

Due to its WTO obligations, Panama revised its export subsidy policies in 1997-98. The government originally had stated its intention to phase out its Tax Credit Certificate (CAT), which was given to firms producing certain non-traditional exports, by the end of 2001. However, during the WTO Ministerial Conference in November 2001, the Government of Panama asked for and received an extension for the use of CATs. The WTO extended this waiver until December 2005, allowing exporters to receive CATs equal to 15 percent of the export's national value added. The certificates are transferable and may be used to pay tax obligations to the government, or they can be sold in secondary markets at a discount. The government has, however, become stricter in defining national value added, in an attempt to reduce the amount of credit claimed by exporters.

In addition, a number of export industries, such as shrimp

farming and tourism, are exempt from paying certain types of taxes and import duties. The Government of Panama established this policy to attract foreign investment, especially in economically depressed regions, such as the city of Colon. Companies that profit from these exemptions are not eligible to receive CATs for their exports.

A new domestic subsidy called the Certificate to Foment Industry (CFI), designed to replace the CATs when they end, was enacted by the former Moscoso administration in February 2004. Panamanian authorities maintain that the CFI will be consistent with Panama's WTO obligations.

The Tourism Law of 1994 (Law 8) allows a deduction from taxable income of 50 percent of any amount invested by Panamanian citizens in tourism development.

Law 25 of 1996 provides for the development of export processing zones (EPZ's) as part of an effort to broaden the Panamanian manufacturing sector while promoting investment, particularly in former U.S. military bases. Companies operating in these zones may import inputs duty-free if products assembled in the zones are to be exported. The government also provides other tax incentives to EPZ companies.

## 16. INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Intellectual property policy and practice in Panama is the responsibility of an "Inter-institutional" Committee. This committee consists of representatives from six government agencies and operates under the leadership of the Vice-Minister of Foreign Trade. It coordinates enforcement actions and develops strategies to improve compliance with the law. The creation of specialized prosecutors for intellectual property-related cases has strengthened the protection and enforcement of intellectual property rights (IPR) in Panama. However, given Panama's role as a transshipment point, industry is concerned Panama will become susceptible to trading in pirated and counterfeit goods.

### a. Copyrights

Though Panama's 1994 copyright law modernized copyright protection and its 2004 update incorporated a special Copyright Office with anti-piracy enforcement powers, piracy remains a significant problem.

The government of Panama is a signatory to the WIPO Copyright Treaty and the WIPO Performances and Phonographs Treaty, but the Copyright Office has been slow to draft and implement further improvements to the Copyright Law. Nevertheless, the office has proposed to enhance border measures and establish new punishable offenses, such as for Internet-based copyright violations.

Though industry welcomes both the effective police and legal action, which have significantly reduced the rate of VHS piracy, internet piracy is quickly emerging in Panama. Both hard goods sales and films in theatrical release are often downloaded, reproduced on optical discs, and then distributed by street vendors. Despite ongoing investigations to detect laboratory facilities, the legal framework guiding internet use in the country remains incomplete. The United States is working with Panama through the current FTA negotiations to establish a legal regime to combat piracy of audiovisual products over the Internet, including notice and take down provisions and clearly defined ISP liabilities as well as temporary copy protection, protection of technological protection measures, and protection against Electronic Rights Management Information removal/alteration.

### b. Patents

Panama's 1996 Industrial Property Law provides a term of 20 years of patent protection from the date of filing. However, pharmaceutical patents are granted for only 15 years and can be renewed for an additional ten years, if the patent owner licenses a national company (minimum of 30 percent Panamanian ownership) to exploit the patent. The Industrial Property Law provides specific protection for trade secrets.

### c. Trademarks

Law 35 provides trademark protection, simplifies the process of registering trademarks and allows for renewal of a trademark for ten-year periods. The law's most important feature is the granting of ex-officio authority to government agencies to conduct investigations and to seize materials suspected of being counterfeited. Decrees 123 of November 1996 and 79 of August 1997 specify the procedures to be followed by Customs and Colon Free Zone (CFZ)

officials in conducting investigations and confiscating merchandise. In 1997, the Customs Directorate created a special office for IPR enforcement, followed by a similar office created by the CFZ in 1998. The Trademark Registration Office has undertaken significant modernization with a searchable computerized database of registered trademarks that is open to the public.

#### 17. SERVICES BARRIERS

In general, Panama maintains an open regulatory environment for services. For some professions, such as insurance brokers, customs brokerage, freight forwarding, architects, engineers, medical doctors, lawyers, and psychologists, Panama requires that individuals hold a Panamanian technical license.

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#### 18. INVESTMENT BARRIERS

Panama maintains an open investment regime and is receptive to foreign investment. Over the years the country has bolstered its reputation as an international trading, banking, maritime, and services center.

However, under the constitution, retail activity is reserved to Panamanians—an issue that the U.S. government seeks to address within the context of FTA negotiations. On a variety of investment issues, the Panamanian government was, until recently, often unresponsive to concerns raised by U.S. investors. For example, a few firms that are closely regulated by, or hold concessions from the Government of Panama, in the past encountered a lack of cooperation from certain officials and abrupt changes related to terms of various concessions or contracts. In 2003, the Government of Panama addressed these problems constructively by re-opening discussions with the U.S. Government under the rubric of the Ad Hoc Investment Commission, which had been used successfully in the past to resolve concerns of U.S. investors. This advanced the resolution of a number of investment disputes and helped open the way for the start of bilateral FTA negotiations.

The U.S.-Panama Bilateral Investment Treaty (BIT) entered into force in 1991 (with additional amendments in 2001). With some exceptions, the BIT ensures that U.S. investors receive fair, equitable and non-discriminatory treatment and that both Parties abide by international law standards such as for expropriation and compensation and free transfers. Conclusion of a bilateral FTA would suspend the availability of both investor-state and state-state dispute settlement under the BIT and replace it with investor-state and state-state dispute settlement under the FTA, except with regard to a dispute arising from an investment agreement and for existing investors for a ten-year period.

A 1998 investment law aimed to enhance new investment in Panama by guaranteeing that investors will have no restrictions on capital and dividend repatriation, foreign exchange use, and disposal of production inside a limited number of sectors in the economy. For a period of ten years, investors will not suffer any deterioration of the conditions prevailing at the time the investment was made.

#### 19. ELECTRONIC COMMERCE

In mid-2001, Panama became the first country in Central America to adopt a law specific to electronic commerce. The law was a collaborative effort between the public and private sectors, resulting from several months of detailed discussions and broad consultations. Panama's electronic commerce law has several important features: it gives legal force to any transaction or contract completed electronically; it creates the National Directorate of Electronic Commerce to oversee the enforcement of the law; and it defines certification organizations and establishes a voluntary registration regime. In addition, in August 2004 partial regulations to the 2001 law were issued to facilitate the registration of certification organizations. The law is expected to have a favorable impact on many sectors of Panama's services dominated economy, particularly the maritime sector.

#### 10. OTHER BARRIERS

##### Corruption

The judicial system can pose a problem for investors due to poorly trained personnel, huge case backlogs and a lack of independence from political influence. Amid persistent

allegations of corruption in the government, particularly in the judiciary, the Torrijos administration committed itself to combating corruption as part of its overall agenda of institutional reform.

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